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Report of of the Working Group on Arbitrary Detention on its follow-up mission to Malta: comments by the State

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the State on the report the Working Group on Arbitrary Detention on its follow-up mission to Malta

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Report of the Working Group on Arbitrary Detention on its follow-up mission to Malta: comments by the State*

Comments on Section titled Note by the Secretariat

1. *'During the visit, it observed that asylum-seekers, immigrants and refugees who arrive in an irregular manner continue to be systematically and routinely detained.' (first paragraph, page 2)*

2. During the visit, it was explained that the Maltese Government was transposing the Recast Receptions Directive. This is now in force. Migrants requesting asylum are only detained on specific grounds established by law which grounds will need to be identified following an individual assessment to be carried out in each case. The situation for migrants who are not asylum seekers also requires an assessment as detention will only be possible for as long the prospect of removal exists.

3. *'The Working Group considers that instead of an automatic and mandatory detention of irregular immigrants, less restrictive measures should be applied, such as deposit of documents; reporting conditions; community release or supervision' designated residence. According to the Working Group, detention should only be applied when all other alternatives have proved it necessary; reasonable in all the circumstances; proportionate to a legitimate purpose; non- discriminatory and subjected to judicial review.'* (second paragraph, Page 2)

4. This is already in place, especially for asylum seekers. Legislation only allows for detention as a last resort and this detention will be immediately reviewed by the independent Immigration Appeals Board ex ufficio.

5. *'According to the Working Group, holding people in open centres without long-term planning for their integration cannot be considered as a suitable solution for themselves and for the Maltese society.'* (Penultimate paragraph, page 2)

6. The objective of Open Centres is to offer accommodation for a limited period until such time as the residents may settle independently. Integration-oriented initiatives are taken with a view to facilitating this process. Residents are guided towards mainstream services which include language courses and access to the labour market, depending on individual circumstances.

7. *'Authorities should facilitate the integration of these persons into society, mainly through labour and education programmes but also through alternative housing provided by other stakeholders. The Working Group notes that programmes for the integration of migrants, asylum-seekers and refugees into the Maltese society remain inadequate.'* (Penultimate paragraph, page 2)

8. There are many efforts by the Government of Malta aimed at the integration of migrants and asylum seekers. These efforts have been further strenghtened since 2015 following the establishment of the Human Rights and Integration Directorate in November 2015. The project, 'Mind D Gap – Towards a National Migrant Integration Strategy 2015-2020' was implemented at the end of 2015. The National Integration Strategy, which is in development, will also be launched in the coming months. Other initiatives include: the dissemination of information through dedicated website (www.integration.gov.mt) and publications which act as a portal of quick access to the most important and necessary information, especially for newly arrived migrants, the set up of an Inter-Ministerial

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Committee on Integration and the Forum on Integration Affairs which gives an effective voice to migrant concerns.

9. *'The Working Group recommends ending the regime of mandatory and automatic detention regime for asylum seekers, refugees and migrants in an irregular situation.'* (final paragraph, page 2)

10. Kindly note that this is already in force. No detention is automatic.

Comments on Section II 'Programme of the follow-up visit'

11. Para 6: The reference to the *'Initial Reception Centre for Children' should read 'Initial Reception Centre for Minors.'*

12. Para 14: The right to remain silent is a legal principle advocated in Maltese legislation including the Criminal Code (Cap 9 of the Laws of Malta), the Police Act (Cap 164 of the Laws of Malta) as well as the Constitution of Malta. Article 355AT of the Criminal Code which deals with the right of legal advice came into force on the 10th February 2010 by means of Legal Notice 35 of 2010. The provision of the Criminal Code is considered exhaustive in so far as the exercise of this right is concerned. It should be noted that reference to the provision of information on the right to be assisted by a lawyer is made in Article 534AB of the Criminal Code as well as in Schedule E to the said Criminal Code. This article provides that it shall be the duty of the Police or of the Court, as the case may be, to inform the suspect or the accused without undue delay of his procedural rights including the right of access to a lawyer, the entitlement to free legal advice, the right to be informed with regard to the fairness of proceedings and the exercise of his rights, the right to interpretation and translation and the right to remain silent. Reference to such rights is also made in the Fourth Schedule to the Police Act. This Schedule refers to the rules that should be applied during an interrogation. Article 4 of the Schedule provides that a person subject to questioning has the right to refuse to answer any question put to him. The Constitution of Malta also provides that no person who is tried for criminal offence, shall be compelled to give evidence at his trial. However, this right does not prejudice the right to be assisted by lawyer, since article 534AB of the Criminal Code enlists the said right as one of the procedural rights.

13. In such cases, the person subject to questioning will be informed that should he refuse to say anything or omit to state some fact, a rule of inference amounting to evidence may be drawn by the Court, if during the trial, such person puts forward any defence based on the facts which he did not state during the interrogation. Article 355AU of the Criminal Code deals with inferences from failure to mention facts. Currently, a Bill is being drafted in order to transpose Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

14. Para 19: The Criminal Code provides that minors under fourteen years will be deemed doli incapax, that is, incapable of formulating the requisite criminal intent. Minors under the age of sixteen are also exempt from criminal responsibility if the minors act without mischievous discretion.

15. Para 25: The Working Group recommends that detention is decided by a court of law. It is to be noted that detention is administrative, but subject to review by the Immigration Appeals Board. Furthermore, it is to be noted that vulnerable groups are not subject to detention. This was already in force during the time of the visit.

16. Para 26: Migrants are not systematically and routinely detained as indicated in report.

17. Para 27: Each case is studied on its own merits. Asylum seekers are only detained as a measure of last resort and other migrants who do not apply for asylum or are rejected at all stages can only be detained as long as there is a realistic prospect for removal.

18. Para 30: As a result of the new policies in place, the average time spent in detention is very short. Although legislation allows for up to 18 months detention, this is not the norm. Most are released within two months.

19. Para 35: Reference is made to plans to convert Lyster Barracks detention centre in a temporary initial reception centre for adults. Kindly note that these plans were discarded. The Initial Reception Centre for adults is now sited at Marsa.

20. Para 37: Reference is made to the Hal Far Open Centre. This is run by the Agency for Welfare of Asylum Seekers (AWAS) which falls under the remit of the Ministry for Home Affairs and National Security, not the Ministry for Social Affairs. Furthermore, movement registration takes place three times a week, not daily as indicated in the draft report. If an adult service-user plans to be absent for several days, AWAS requests that he/she informs AWAS in advance of the absence. The migrant is not asked for details of his whereabouts.

21. Para 36: Reference is made to 'special areas for children and families.' Kindly note that Malta does not detain children and their families, therefore no area is dedicated to this group. This paragraph also states 'Legal Aid was supposed to be provided on Tuesdays.' This is incorrect as there are no fixed days for legal aid. It is provided upon request.

22. Para 38: The paragraph states: 'Residents were suffering uncomfortable living conditions given inadequate ventilation and high temperatures in the summer months, in addition to the overcrowded condition in each unit .' At the time of the visit overcrowding was not a significant issue.

23. Para 40: The meals offered were over and above the food allowance, which is meant to permit a service-user to purchase whatever he/she wishes.

24. Para 41: At the time of the visit, the Government of Malta had already taken a commitment that migrant children would no longer be subject to detention.

25. Para 46: 'requested' should be replaced with 'necessary' or 'required.'

26. Para 49: The maximum period of detention is defined for asylum seekers and irregular migrants.

27. Para 50: Alternatives to detention have been implemented.

28. Para 60, 62: Reports of the Board of Visitors for Detained Persons are submitted to the Minister for Home Affairs and National Security.

29. Para 62: Issues concerning correctional facilities are within the remit of the Board of Visitors for the Prisons.

30. Para 62: The members of the Board of Visitors for Detained Persons visit detainees at the Safi Detention Centre every week. Moreover, members of the Board visit detained persons whenever they are transferred temporarily for treatment, for example to Mount Carmel Hospital for mental health treatment. There is no restriction in the access of Board members to these persons. It is worth highlighting that the Board of Visitors for Detained Persons Regulations, published by Legal Notice 266 of 2007, as amended by Legal Notice 251 of 2012, provides that: "14. (1) The Board and every member thereof shall have access at any time to every part of the detention centres and to every detainee and may interview any detainee out of the sight and hearing of all officers."

31. Para 63: Further to the observations of the Working Group in this paragraph, as the Working Group also observed, the mandate of the Ombudsman is quite wide and the Office has in fact investigated complaints lodged by migrants when they allege that their fundamental human rights have been and are likely to be breached and has also ensured a presence at the Corradino Correctional Facility so as to ensure that complaints on public administrative matters from persons deprived of their liberty are properly reviewed.

32. Para 69: The aim of parole is to facilitate the reintegration of offenders into the community following their successful adherence to the individualised care plan developed whilst serving their sentence in prison. For this purpose those inmates who apply and have a stable family and employment structure upon release are at an advantage. Furthermore, as the Restorative Justice Act points out all EU nationals are eligible to apply for Parole. A number of EU nationals as well as inmates who have humanitarian protection in Malta have been granted a Parole License.

33. Para 71: Open Centres are not established or built on military premises.

34. Para 73: Resettlement, assisted voluntary return, and integration outcomes are all available, with some limitations and restrictions.